Recommendation 1037 (1986)[1]

Data protection and freedom of information

Parliamentary Assembly

The Assembly,

1. Bearing in mind that democracies are characterised by the distribution and circulation of a maximum amount of information within society ;

2. Aware of the contribution made by the Committee of Ministers to the promotion of a free circulation of information within society in adopting Recommendation No. R (81) 19, on access to information held by public authorities, as well as its Declaration on the freedom of expression and information of 29 April 1982, which declared that the pursuit of an open information policy in the public sector, including access to information, is among the objectives of member states ;

3. Having regard also to Recommendation 854 (1979), on access by the public to government records and freedom of information, and Recommendation 582 (1970), on mass communication media and human rights, of the Parliamentary Assembly, stating that the rights provided for by Article 10 of the European Convention on Human Rights should be extended ‘‘to include freedom to seek information... (with) a corresponding duty on public authorities to make information available on matters of public interest subject to appropriate limitations" ;

4. Recognising that the principle of freedom of information/access to official information has been introduced by many national, federal and state legislatures of member states of the Council of Europe as well as elsewhere ;

5. Having particular regard to the legislation of Denmark, France, the Netherlands, Norway and Sweden, on access to official information, as well as of Australia, Canada and the United States ;

6. Recalling that a right to have access to official information may be restricted in the interests of the protection of privacy ;

7. Believing therefore that the protection of privacy influences the amount of information which can circulate in society ;

8. Recalling in this context the basic data protection principles set out in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, of 28 January 1981, which impose limitations on the collection, storage, use and communication of personal information ;

9. Aware of the fact that the convention of28 January 1981, which has now entered into force, confers a right of access to personal data only, and that this right is reflected in the data protection laws of Austria, Denmark, France, the Federal Republic of Germany, Iceland, Luxembourg, Norway, Sweden and the United Kingdom ;

10. Convinced however that the coexistence of access to official information legislation and data protection legislation may come into conflict especially where they are administered separately by different organs and under different criteria ;

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1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 3 July 1986. See Doc. 5572, report of the Legal Affairs Committee.

11. Conscious of the fact that certain countries have sought to avoid conflicts by legislating for access to official information and data protection at the same time, and have therefore shown that the concepts are not mutually distinct but form part of the overall information policy in society, Canada, the province of Quebec (Canada) and the state of Hesse (Federal Republic of Germany) being cases in point ;

12. Considering that new technological developments may render obsolete existing legislation, and that the Council of Europe should therefore continue to give a lead and provide guidelines for the national legislators concerning the problems raised by new technologies ,

13. Recommends that the Committee of Ministers instruct the Committee of experts on data protection :

a. to identify criteria and principles according to which data protection and access to official information could be reconciled ;

b. to prepare an appropriate legal instrument setting out such criteria and principles

14. Invites the governments of member states which have not yet done so to ratify the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.